IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2898 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORBHAI KALIDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/06/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 16-3-2000

passed by the District Magistrate, Surat in exercise of powers under section 3(2) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O.) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O.) essential to the community.

2. I have heard learned advocate for the petitioner, Mr.H.R.Prajapati, learned AGP for the State, Mr.S.J.Dave and learned Addl. Central Govt. Standing Counsel for the Central Govt., Ms.Davawala.

3. Learned advocate for the petitioner has mainly argued that the complaint under Secs.186 and 201 of Indian Penal Code has been filed against the present petitioner and one Nasirbhai by the Inspector of Civil Supplies Department, State of Gujarat before the Ichhapur Police Station on 6-1-2000 and same has been registered as Ichhapur Police Station C.R. No.I-3 of 2000 and thereafter Civil Supplies Department has also started further investigation in the matter and also collected the material evidence and at the end of it, the authority has passed the order on 16-3-2000. It was stated that detenue was actually detained on 17-3-2000 and sent him to Central Jail, Vadodara. It was further stated that the detaining authority has also taken into consideration the bail order dated 19-1-2000 which has been granted in favour of the petitioner by the learned Addl. Sessions Judge, Surat in Misc. Cri. Appln. No.42 of 2000 under Sec.439 of the Code of Criminal Procedure. According to him, though the authority has relied upon the bail application and the order passed on it, copies of the same have not been supplied to the petitioner along with the grounds of detention and, therefore, the rights of the petitioner under Article 22(5) of the Constitution of India of making a fair representation are violated. He has drawn my attention towards the affidavit which has been filed by Mrs. Sangeeta Singh, District Magistrate, Surat, who is the the detaining authority herein, more particularly type page 9 of the affidavit wherein she has stated as under:-

"Therefore, detention order has been passed only after adult consideration of the offence registered against him in the Ichhapore Police station, as well as the bail application made by him in the Hon. Competent Court, as well as getting released on bail by the Court. Therefore, the detention order so passed is full justified and is a legal one, with the provisions

of law and the same is not contravening any provision of the Constitution of India, as alleged by the petitioner."

4. Learned AGP is not in a position to say anything regarding the fact stated by the learned advocate for the petitioner that though the bail application and the order passed on it have been relied upon by the detaining authority in passing the order of detention, copies of the same have not been supplied to the petitioner even after specific demand was made by the petitioner by way of representation.

5. It has been held in a case reported in AIR 1991 S.C. 2261 in the case of Ibrahim Shareef M. Madhafushi Vs. Union of India and Ors. more particularly point (6) of para 12. Point (6) of para 12 reads as under:

"In case where detenu is released on bail and is at liberty at the time of passing the order of detention, the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

6. It has been held by the Apex Court in another judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

7. It is the duty of the authority to supply copy of the statements and documents with the detention order.

Here in this case, copies of the bail application as well as the order passed on it, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

8. In view of the aforesaid, the petition is allowed. The impugned order of detention dated 16-3-2000 passed against the detenu is hereby quashed and set aside. The detenu-Kishorebhai Kalidas Patel is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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